HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 15341 OF 2003

DATED: 3.8.2006

Between:

M. Kishan Chand

… Petitioner

and

The Regional Joint Commissioner of
Endowments and others

…
Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.15341 OF 2003

ORAL ORDER:

Heard the learned counsel for the petitioner Sri T. Lakshminarayana, led by Sri Koka Raghava Rao, learned senior counsel, the learned Government Pleader for Endowments for Respondents 1 to 3 and Sri K. Ravi for respondent No.4-Temple.

The writ petition is filed with a prayer as follows:

> *"…declaring that the procedure adopted by the 1st and 2nd respondents invoking Section 83 of A.P. Act 30 of 1987 is arbitrary, illegal and unfair apart from being violative of*

fundamental principles of natural justice and the matter relating to O.A.No.57 of 2002 has to be reconsidered by the 2nd respondent after giving opportunity to the petitioner to submit his written arguments and also after considering the offer of the petitioner for the enhancement of rent and to determine the reasonable rent in accordance with law and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case".

The 4th respondent is a Temple whose secular management is currently regulated by the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') earlier, by the provisions of the 1966 Act. Among the properties of the 4th respondent-Temple, is a Mulgi No.9-1-63, Station Road, Opposite Jama Masjid, Khammam Town. It would appear that since March 1993, the petitioner is in

occupation of this mulgi. Presumptively, on the basis of a lease granted by the then hereditary Chairman one Nageshwar Rao and for a period of 7 years from 1.3.1993 to 28.2.2000, on a monthly rental. It does not appear from the record that the lease/licence granted by Nageshwar Rao to the petitioner in 1993 was ever approved by the competent authority, as required under the provisions of the 1966 Act. After February 2000, as even the lease granted to the petitioner by the erstwhile hereditary trustee ceased to be operational. The person-in-management of the Temple appears to have addressed a letter to the Assistant Commissioner, Endowments, inter alia, that the lease in favour of the petitioner had expired; he was not paying rents regularly but was continuing in the mulgi and requested the Assistant Commissioner to initiate proceedings for removal of the petitioner, treating him as

an encroacher.

Thereupon, the Assistant Commissioner, Endowments, submitted eviction proposals, to the 2nd respondent. The 2nd respondent issued the petitioner a notice dated 7.8.2002, calling upon him to show cause before 18.8.2002 why an order treating him as an encroacher and eventually an order of eviction, be not passed. The petitioner submitted his response thereto on 18.8.2002 denying that there was an encroachment and he was an encroacher; that he had spent more than Rs.1,00,000/- on the premises to make it fit for business; that he is continuing to pay rent and is also ready to enhance 25% over the existing rent; and that the conduct of business by the petitioner in the premises is the sole source of his livelihood. This explanation of the petitioner was totally silent and conveniently so with regard to his

legal entitlement to the occupation of premises in question, after February 2000. The petitioner's explanation did not also set out any basis for his assertion that he was not an encroacher.

The 2nd respondent took up the complaint (against the petitioner's continuation in the 4th respondent's mulgi) as proceedings under Section 83 of the Act, in O.A.No.57 of 2002. After considering the petitioner's explanation including a representation dated 5.12.2002 addressed by the petitioner to the 2nd respondent, during the course of the Section 83 proceedings (requesting the 2nd respondent to continue him in the same premises on a 30% enhancement over the existing rent), eventually on the basis of the petitioner's explanation and the material available on record, the 2nd respondent by the order

dated 6.1.2003 declared the petitioner an encroacher; directed him to vacate the premises within 15 days from the date of receipt of the order, failing which the 3rd respondent was directed to take action for his eviction.

Aggrieved by the 2nd respondent's order dated 6.1.2003, the petitioner preferred a revision to the 1st respondent purportedly under Section 92 of the Act. The 1st respondent entertained R.P.No.2 of 2003 instituted by the petitioner against the order of the 2nd respondent dated 6.1.2003 and initially granted a stay of operation of the 2nd respondent's order dated 6.1.2003 for a period of 15 days. Thereafter on 4.2.2003, the petitioner applied to the 1st respondent for extension of the stay orders till the disposal of R.P.No.2 of 2003. No orders were passed thereon.

Meanwhile on 17.1.2003, the petitioner petitioned the Commissioner of Endowments Department under Section 89 of the Act, seeking extension of lease of the premises for a further 3-year period. By the order dated 25.2.2003, the Commissioner of Endowments while declining to exercise jurisdiction under Section 89 of the Act (as the petitioner had not obtained the consent of the executive authority for filing an application under Section 89 of the Act), however gratuitously examined the petition and directed, by the order dated 25.2.2003, that the petitioner be continued till the demolition of the structures as proposed by the trust board of the 4th respondent-Temple, for a period of 3 years w.e.f 1.3.2000, on payment of an amount of Rs.10,000/- per month. Curiously, the Commissioner of Endowments despite noting that the petitioner is in arrears of the rents for the

premises he is in occupation of, was satisfied with an undertaking by the counsel for the petitioner that the petitioner would vacate as and when the proposed demolition takes place and that the petitioner agrees to pay the arrears within three months. Unfortunately, it would appear to this court, the Commissioner of Endowments had, by the order dated 25.2.2003, bartered away the interests of 4th respondent-Temple at the maximum possible discount available to his unfettered discretion. Such are the ways of administrative authorities under the provisions of the Act including the Commissioner of Endowments.

Be that as it may.

Having petitioned the Commissioner of Endowments to activate a jurisdiction under Section 89 of the Act on

17.1.2003, the petitioner filed this writ petition on 24.7.2003. In paragraphs (3) and (5) of the affidavit accompanying this writ petition, the petitioner vaguely asserts that his revision preferred before the 1st respondent, under Section 92 of the Act, appears to have been disposed of/closed on 7.7.2003. The petitioner does not make an effort to challenge the order dated 7.7.2003 apparently closing R.P.No.2 of 2003 nor, if he was not served a copy of this order, has he made any effort to seek a direction to the respondents to furnish him a copy of the order, even in this writ petition. A quasi-judicial order of the 1st respondent, passed in exercise of the powers under Section 92 of the Act and directed against a quasi-judicial determination of the petitioner as an encroacher (by the second respondent in exercise of the powers under Section 83 of the Act), is challenged by

way of a casual mention in the affidavit. No specific relief of Certiorari is sought. Such is the discipline of the writ petition.

It now transpires from a perusal of the record, that in view of the order of the Commissioner of Endowments dated 25.2.2003, mentioned supra, the 1st respondent by order dated 7.7.2003, closed R.P. No.2 of 2003 since "the parties had compromised".

The determination by the 2nd respondent that the petitioner is an encroacher, vide his orders dated 6.1.2003 has therefore become final.

The petitioner does not assail the order of the 2nd respondent dated 6.1.2003, either expressly or by any compelling implication, in this writ petition. Against the order of the Commissioner dated 25.2.2003, the petitioner

appears to have petitioned the State Government which was understood by the State Government as a revision preferred under Section 93 of the Act. As is apparent from the order of the Commissioner, Endowments dated 25.2.2003, that order was not an exercise under Section 89 of the Act. It is not clear to this court today either, nor is the learned Government Pleader for Endowments able to inform this court as to under what statutory provision the extraordinary discretion was exercised by the Commissioner of Endowments granting extension of lease to the petitioner for a period of 3 years till the demolition of the premises as proposed by the trustees of the 4th respondent-Temple. How the State Government proceeded to consider such vague exercise of power by the Commissioner of Endowments (vide the order dated 25.2.2003) as an order passed under any provision of the

Act and how the revision of the petitioner against that order of the Commissioner was entertained as an application under Section 93 of the Act, is equally intriguing. In any event, it would appear as though statutory authorities just exercise powers without inquiring as to its legitimacy. Except the holding a public office, there appears no justification for the exercise of power leading to the order of the Commissioner dated 25.2.2003 or the order of the State Government dated 4.7.2003 upholding the order of the Commissioner granting extension of a non-existing lease to an established defaulter.

In the context of the wholly vague reliefs sought in this writ petition, and in the light of the meandering chronology of facts and the litigative frenzy of the petitioner petitioning one authority after another in rapid

succession and in the context of the fact that the petitioner does not place before this court even a scintilla of evidence to establish the legitimacy of his continuance in the mulgi of the 4th respondent-Temple ever since 1993 and at any rate since February 2000 or even (in a worst case scenario) beyond 2003 (vide the order of the Commissioner of Endowments dated 25.2.2003), the petitioner cannot escape the appellation of being an encroacher of Endowment properties. There is no other conclusion permissible in law and there is no fact in the entirety of the record which even marks a marginal doubt on this conclusion. The order of the Dy. Commissioner of Endowments dated 6.1.2003, determining the petitioner as an encroacher, is therefore impeccable and not liable to be interfered with.

The learned senior counsel appearing for the

petitioner, Sri Koka Raghava Rao stated that Section 149 of the Act ordains that the procedure at enquiries under the Act should, as nearly as may be, be in accordance with the provisions applicable under the Code of Civil Procedure, 1908. The learned senior counsel would also contend that the procedure for exercise of power by the Dy. Commissioner under Section 83 of the Act is regulated by the Removal of Encroachment Rules, 1987 issued by the State Government in purported exercise of the rule making power under Section 153 of the Act; and Rule 4 of these rules reiterates the provisions of Section 149 and enacts that the provisions of the CPC shall apply as far as practicable to the production of documents, examination of witnesses, taking of oral evidence, proof of affidavit and filing of exhibits etc. On the basis of the aforesaid rule and the provisions of Section 149 of the

Act, the learned senior counsel would contend that the entire procedural matrix of the CPC would apply and an order of the Dy. Commissioner of Endowments, exercising power under Section 83 of the Act, passed in transgression of such procedure, would suffer a fatal infirmity and the conclusion be unenforceable.

It is too well established in law that procedure is but a handmaiden of substantive justice and the adjudicatory fora are not created for the mere effectuation of procedural exuberance. In any event, the Dy. Commissioner, exercising power under Section 83 of the Act, is a quasi-judicial Tribunal and both Section 149 of the Act and Rule 4 of the Rules mandate that the procedure ordained in the CPC should be followed by the Dy. Commissioner in conducting enquiries under Section 83 of the Act, as far as may be practicable. There is an equally well settled

principle in administrative law that mere transgression of a procedural prescription would not per se invalidate an eventual decision unless the complainant of alleged transgression establishes before the court that he has suffered a prejudice thereby or that the failure to follow the procedure has in some way disabled the ascertainment of the truth of the matter in issue. In the case on hand, the petitioner on his own showing is an encroacher. In no proceedings, either before the Dy. Commissioner, the Commissioner, the State Government or even in this court, does the petitioner state any fact that establishes the legitimacy of his claimed lease, even for a day.

The petitioner would contend that he continued to pay the lease amounts even after the year 2000 and the State actors i.e. managers of the 4th respondent-Temple,

Assistant Commissioners and the Dy. Commissioner of Endowments had without demur received the lease amounts paid by the petitioner, the petitioner must be considered not an encroacher but as a legitimate lessee. This is a contention that is stated to be rejected. No illegal act of a State actor, contrary to the legislative mandate can elevate a transaction to the throne of legitimacy. Vagrant or careless conduct of public officers is a vagrant conduct nevertheless. It does not confer legitimacy by the mere fact that the actor is the holder of a public office. It is not the province of this court to legitimize executive conduct which is in transgression of the legislative mandate; to do so would be a subversion of the cherished values of a rule of law society. If the petitioner had no legitimate lease, mere receipt of money by endowment officers and the petitioner's factual occupation of the mulgi

of the 4th respondent-Temple, would not convert the status of the petitioner from an encroacher to a lawful lessee. We cannot canonize executive heresy of legislative edicts. No such power of the executive is suggested; no such power can be countenanced in law.

For all the aforesaid reasons, there are no merits, the writ petition beseeches rejection and is accordingly dismissed. All interim orders stand dissolved. No order as to costs.

GODA RAGHURAM, J

Date: 3.8.2006
CVM